



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,932	07/15/2003	Rebecca L. Engel	P0011481.00	6826
77218	7590	02/04/2011		
Medtronic CardioVascular Mounds View Facility South 8200 Coral Sea Street N.E. Mounds View, MN 55112			EXAMINER MEDWAY, SCOTT J	
			ART UNIT 3763	PAPER NUMBER
			NOTIFICATION DATE 02/04/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/619,932

Applicant(s)

ENGEL ET AL.

Examiner

SCOTT MEDWAY

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/22/2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 3, 7, 8, 10 and 13

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments with respect to the pending claims are not found persuasive.

Responding to Applicant's argument that Examiner "continues to maintain the unsupported position that the Ash reference contemplates a variety of aperture shapes", Examiner directs Applicant to the Final Office Action mailed 10/15/2010 in which no reference was made to Ash teaching a variety of aperture shapes. Examiner noted in the Office Action that Ash does not appear to provide criticality for any particular shape (see Final Office Action, pg. 3) and that merely changing the shape would not expressly teach away from the invention of Ash. Examiner acknowledges that Ash does provide "for a specific arrangement of apertures"; however, Examiner asserts that it is Applicant conjecture that "any such departure from the illustrated circular apertures of Ash ... could undesirably alert the desired and specifically described functionality of these apertures". There appears to be no explicit or implicit teaching or support found in Ash that modifying the shapes of the apertures would undesirably alter the device's functionality.

Responding to Applicant's argument that one would not seek to replace the "holes" of Ash with the "slits" found in de la Rama, Examiner asserts that the apertures of de la Rama are fully capable of acting as "holes" under certain known configurations of the de la Rama device. Based on such evidence, it would appear as if the "slits" of de la Rama could be used interchangeably with the "holes" of Ash at least when the "slits" of de la Rama approximate the shape of the "holes" of Ash. Responding to Applicant's argument that the modification would necessarily "limit the efficacy of the hemodialysis device", Examiner disagrees on the basis that in certain configurations the "holes" of Ash approximate the shape of the "slits" of de la Rama in certain known configurations; therefore, it is unclear how the efficacy of the device might be compromised.

Responding to Applicant's argument that de la Rama fails to disclose the claimed "rows" of slits, Examiner asserts that a "row" may be reasonably broadly defined as "an arrangement of objects side by side in a line." Thus, Applicant's claimed "plurality of rows" simply requires the holes to be arranged side by side in a line in accordance with the broadest reasonable definition of the term "row". It is Examiner's assertion that de la Rama clearly shows this configuration.